

## **ORDINANCE 1-2018**

### **AN ORDINANCE AMENDING THE MADISON COUNTY SUBDIVISION REGULATIONS TO REFLECT STATUTORY CHANGES FROM THE 65<sup>TH</sup> MONTANA LEGISLATIVE SESSION AND HOUSEKEEPING CORRECTIONS**

WHEREAS, the Madison County Subdivision Regulations were adopted by Ordinance 1-2015; and

WHEREAS, the 65<sup>TH</sup> Legislature and the Governor of Montana established an update to subdivision regulations; and

WHEREAS, House Bill 445 explicitly allows phasing developments; changes would allow a developer to submit a phased plan. The sections affected are: II.B3.f.(2) – Pre-application Procedure; II-C.6.a.(6) – Overall Development Plan; II-E.2. Preliminary Plat Process; Appendix 5 Pre-application checklist; Appendix 9 – Preliminary Plat Checklist; and Appendix 19 – Final Plat Checklist; and

WHEREAS, House Bill 416 specifies that the governing body's findings of fact must be based on the record of the subdivision application as a whole. The only section affected is II.E.1.h.under the preliminary plat review process; and

WHEREAS, House Bill 245 codifies the process for reviewing final plats to determine conformance to the preliminary plat and establishes a 20-working-day time period in which to complete the review. The sections modified in II-H, Final Plat Review Process are 2, 4.a. and 4.b.; and

WHEREAS, Senate Bill 219 clarifies an exemption for remainder parcels when the mortgage parcel transferred without foreclosure before October 1, 2003. Section VI. D.2.3.(2) Exemption Review Criteria was modified to include the required language.; and

WHEREAS, a correction to an old reference in the Pre-application checklist and a misnumbered paragraph were corrected; and

WHEREAS, the proposed changes to the Madison County Subdivision Regulations were made available for public review and comment and a public hearing was advertised before the Madison County Planning Board; and

WHEREAS, no comments being received before or during the Madison County Planning Board public hearing held on November 27, 2017 the Madison County Planning Board has recommended to the Madison County Board of Commissioners that the Madison County Subdivision Regulations adopted in 2015 be amended as proposed;

and

WHEREAS, on December 12, 2017, the Madison County Board of Commissioners adopted Resolution 38-2017, a Resolution of Intention to Adopt Amended Subdivision Regulations as recommended by the Madison County Planning Board; and

WHEREAS, copies of the proposed changes were made available at the Madison County Commissioners Office; the Madison County Planning Office; the Madison County Clerk and Records Office; public libraries in Virginia City, Ennis, Sheridan and Twin Bridges; and the Madison County website, [www.madisoncountymt.gov](http://www.madisoncountymt.gov); and

WHEREAS, on January 16, 2018 the Madison County Board of Commissioners held a public hearing on the proposed changes; and

WHEREAS, after considering comments received up to and through the public hearing held on January 16, 2018, the Madison County Board of Commissioners finds no changes are needed to the recommendations by the Madison County Planning Board.

NOW, THEREFORE BE IT ORDAINED, as follows:

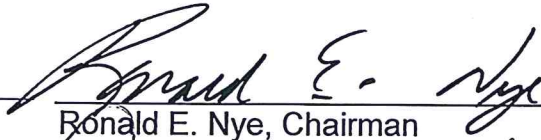
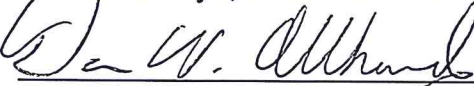

- a) Exhibit A showing the modified sections of the Madison County Subdivision Regulations with additions underlined and deletions shown in strikeout is attached to this Ordinance as part of this Ordinance.
- b) The modified sections in Exhibit A replace those sections in the Madison County Subdivision Regulations adopted in April 2015.
- c) Exhibit B attached to this Ordinance is provided as a reference to the specific bill numbers and housekeeping clarifications associated with each change.

PASSED AT FIRST READING by the Madison County Board of Commissioners this 16<sup>th</sup> day of January, 2018.

ATTEST:

APPROVED:

Kathleen Mumme  
Clerk and Recorder  
Madison County

  
Ronald E. Nye, Chairman  
  
Dan W. Allhands  
  
James P. Hart  
Board of Commissioners  
Madison County


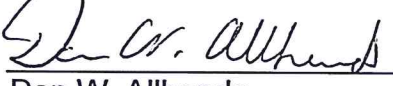
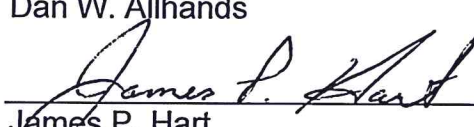
This Ordinance shall take effect as of March 2, 2018

PASSED AT SECOND READING by the Madison County Board of Commissioners this  
30<sup>th</sup> day of JAN., 2018

ATTEST:

APPROVED:

Kathleen Mumme  
Clerk and Recorder  
Madison County

  
Ronald E. Nye, Chairman  
  
Dan W. Allhands  
  
James P. Hart  
Board of Commissioners  
Madison County



## Exhibit A - Ordinance 1-2018

### Amendments to Madison County Subdivision Regulations

Additions underlined, deletions in ~~strikeout~~

#### Section II-B.3.f.(2)

- (a) tract and lot boundaries;
- (b) land uses;
- (c) phasing of the development, if applicable;
- ~~(e)~~(d) public and private improvements;
- ~~(d)~~(e) location of utility lines and facilities;
- ~~(e)~~(f) easements and rights of way;
- ~~(f)~~(g) parkland, open space, and/or conservation easements; and
- ~~(g)~~(h) existing noxious weeds.

Section II-C.4.a.(6) Brief description of any ~~planned~~ proposed development phases.

Section II-E.1.h.(7) In arriving at its decision, the governing body shall issue written findings of fact that weigh the criteria in Subsection II-E.2. Review Criteria below, as applicable.

(a) Findings of fact approved by the governing body concerning whether the development of the proposed subdivision meets the requirements of the Montana Subdivision and Platting Act must be based on the record of the subdivision application as a whole. The governing body's findings of fact must be sustained unless they are found to be arbitrary, capricious, or unlawful.

#### Section II-E.2. Review Criteria Phased Development

a. A subdivider applying for the review of a phased development shall submit with the subdivision application an overall phased development preliminary plat on which all of the independent development phases must be presented. The application must also contain the information required pursuant to these regulations and parts 5 and 6 of the Montana Subdivision and Platting Act for all phases of a development and must include a schedule for when the subdivider plans to submit for review each phase of the development. The subdivider may change the schedule for review of each phase of the development upon approval of the governing body after a public hearing as provided for in subsection (2)(d) below. The change in the schedule shall only be approved if the change does not negate the original conditions of approval or otherwise adversely affect public health, safety, and welfare.

b. Except as otherwise provided by this section, the application for the phased development must be reviewed in conformity these regulations and parts 5 and 6 of the Montana Subdivision and Platting Act. In addition, each phase of the phased development must be reviewed as provided in subsection (2)(d) below.

c. The governing body may approve phased developments that extend beyond the time limits set forth in 76-3-610 but all phases of the phased development must be submitted for review and approved, conditionally approved, or denied within 20 years of the date that the overall phased development preliminary plat is approved by the governing body.

d. Prior to the commencement of each phase, the subdivider shall provide written notice to the governing body. The governing body shall hold a public hearing pursuant to



76-3-605(3) within 30 working days after receipt of the written notice from the subdivider. After the hearing, the governing body shall determine whether any changed primary criteria impacts or new information exist that create new potentially significant adverse impacts for the phase or phases. Notwithstanding the provisions of 76-3-610(2), the governing body shall issue supplemental written findings of fact within 20 working days of the hearing and may impose necessary, additional conditions to minimize potentially significant adverse impacts identified in the review of each phase of the development for changed primary criteria impacts or new information. Any additional conditions must be met before final plat approval can occur for each particular phase. The approval for each phase must be in accordance with 76-3-611 and shall not be in force for more than 3 calendar years or less than 1 calendar year within the maximum time frame of 20-years provided in subsection 2(c) above.

### Section II-E.2.3. Review criteria

#### Section II-H.2 Determination of conformance Planner Review of Final Plat

Within 20 working days of receipt of a final plat, the planner shall review the final plat application package to determine whether it contains the information required under Section II-G (Final Plat Submittal Requirements) and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of that determination in writing. ensure that all required items are included, and that all conditions of preliminary plat approval have been satisfied. The planner may inspect the proposed subdivision site in order to complete the review of the final plat application.

If the planner determines that the final plat does not contain the information required under Section II-G (Final Plat Submittal Requirements), the planner shall identify the final plat's defects in a written notification to the subdivider or the subdividers agent. The planner may review subsequent submissions of the final plat only for the information found to be deficient during the original review of the final plat application.

If the planner determines that an examining land surveyor must review a final plat, this requirement shall be identified in the original notification to the subdivider or the subdivider's agent. The examining land surveyor will review the final plat for errors and omissions in calculation or drafting. The subdivider is responsible for the cost of the examining land surveyor's review.

The 20 working days for the planner's review of the final plat application applies to each submission of the final plat until the planner provides the subdivider or subdivider's agent with a written determination that the final plat application contains all the information required under Section II-G (Final Plat Submittal Requirements).

Once the planner determines that the final plat application contains all the necessary information, the planner shall prepare a written recommendation to the governing body and, in the recommendation, identify any issues of nonconformance. The subdivider shall receive a copy of the planner's recommendation, as well as notification of the time and place of the governing body's meeting to review the final plat submittal.

#### Section II-H.4.

a. Within 20 working days of the planner's written determination that the final plat application contains all of the necessary information, the governing body shall review and



approve or deny the final plat. Pursuant to 76-3-611, MCA, the governing body shall examine each final subdivision plat and shall approve the plat only if:

#### Section II-H.4.

##### b. Final plat conformance

The final plat submitted shall conform in all major respects to the preliminary plat as previously reviewed and approved by the governing body and shall incorporate all modifications required in its review. The governing body, however, may approve a final plat which has been modified to reflect improvements in design (such as a reduction in lots) or changes which have occurred in its natural surroundings and environment since the time of the preliminary plat review and approval.

For any reason relating to compliance with the conditions of preliminary plat approval or proposed modifications of the plat, the governing body may refer the final plat submittal to the planning board for review and recommendation, prior to making a decision.

The governing body may require that final subdivision plats be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat meets the surveying and filing requirements of the Montana Subdivision and Platting Act, the examining land surveyor shall certify the compliance in a printed or stamped certificate on the plat. The certificate must be signed by the examining land surveyor.

The governing body may provide for the review of the abstract or certificate of title of the land in question by the county attorney.

~~After the application is submitted to the planner and deemed complete, t~~The governing body shall review and act on the final plat within 20 working days of the planner's determination that the final plat is complete, as follows:

#### Section VI-D.2.

b.d. Division to Provide Security for Mortgages, Liens or Trust Indentures for the purpose of construction improvement to the land being divided, or refinancing purposes

(1) When this exemption is to be used, the landowner shall submit to the clerk and recorder a signed statement from a lending institution that the creation of the exempted parcel is necessary to secure a construction loan for buildings or other improvements on the parcel.

(2) Pursuant to 76-3-201(3), the land divided by this exemption may be of any size. Further, this exemption applies if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. A transfer of the divided land, by the owner of the property at the time that the land was divided, to any party other than those identified in this subsection subjects the division of land to the subdivision review requirements outlined in Chapter II, except as provided in subsection b.(2)(a) below.

(a) If a parcel of land located within the county was divided pursuant to 76-3-201(1)(b), MCA and one of the parcels created by the division was conveyed by the landowner to another party without a foreclosure before October 1, 2003, the remaining parcel is not subject to the requirements of the Montana Subdivision and Platting Act.

Appendix 5 Pre-application Checklist, Item 2.

Subdivision Assessment Form (~~appendix C~~Appendix 6) – signed

Appendix 5 Pre-application Checklist, Item 5.b. Information on the proposed subdivision

1. tract and lot boundaries
2. land uses
3. proposed phasing, if applicable
- ~~3-4.~~ public and private improvements
- ~~4-5.~~ location of utility lines and facilities
- ~~5-6.~~ easements and rights of way
- ~~6-7.~~ parkland, open space, and/or conservation easements

Appendix 9 Preliminary Plat Checklist, Preliminary Plat Supplements

v. Overall phasing plan and phasing schedule

~~v- w.~~ Other public comments received

Appendix 19 Final Plat Checklist, Final Plat/Plan Supplements

s. Final overall phasing plan and phasing schedule

## Exhibit B

| Section                               | Subsection  | Change  | Purpose                   |
|---------------------------------------|-------------|---|---------------------------|
| II-B. Pre-Application Procedure       |             |   |                           |
|                                       | 3.f.(2)     | INSERT new (c)<br>RENUMBER former (c) through (g)   | HB 445 Phasing            |
| II-C. Overall Development Plan        |             |   |                           |
|                                       | 4.a.(6)     | Change "planned" to "proposed"  | HB 445 Phasing            |
| II-E. Preliminary Plat Process        |             |   |                           |
|                                       | 1.h.        | INSERT new (7)<br>RENUMBER former (7) to (8)  | HB 416 Standard of Review |
|                                       | 2           | INSERT NEW 2 Phased Developments, and subparagraphs a-d<br>RENUMBER former 2 to 3   | HB 445 Phasing            |
| II-H. Final Plat Review Process       |             |   |                           |
|                                       | 2           | Modify title "Determination of conformance" to "Planner review of final Plat" and add required process with 20-day time limit | HB 245 Final Plat Review  |
|                                       | 4.a.        | Add reference to 20-working day deadline  | HB 245 Final Plat Review  |
|                                       | 4.b.        | Add reference to 20-working day deadline  | HB 245 Final Plat Review  |
| VI.D. Exemption Review Criteria       |             |   |                           |
|                                       | 2.d.        | Correct section number from b. to d.  | Housekeeping              |
|                                       | 2.d.(2)     | Modify to add subparagraph (a) referencing October 1, 2003 transfers  | SB 219 Mortgage Exemption |
| Appendix 5 Pre-application checklist  |             |   |                           |
|                                       | 2           | change reference from appendix C to Appendix 6  | Housekeeping              |
|                                       | 5           | ADD new 3 - proposed phasing<br>RENUMBER former 3-6   | HB 445 Phasing            |
| Appendix 9 Preliminary Plat checklist |             |   |                           |
|                                       | Supplements | ADD new v. Overall phasing plan and phasing schedule<br>RENUMBER former v. to w.  | HB 445 Phasing            |
| Appendix 19 Final Plat                |             |   |                           |
|                                       | Supplements | ADD new item s. - final overall phasing plan and phasing schedule   | HB 445 Phasing            |